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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

16 JOHN PETERSON, individually,

17 Plaintiff,

18 vs.

19 UNITED FINANCIAL CASUALTY
20 COMPANY; DOES I-V; and ROE
21 CORPORATIONS VI-X, inclusive,

22 Defendants.
23

CASE NO.: 2:22-cv-1509-JCM-NJK

**PLAINTIFF JOHN PETERSON'S
REPLY IN SUPPORT OF MOTION
FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT
AGAINST DEFENDANT UNITED
FINANCIAL CASUALTY
COMPANY**

24 Plaintiff JOHN PETERSON, by and through his counsel of record, Dennis M.
25 Prince and Kevin T. Strong of PRINCE LAW GROUP, and Craig W. Drummond and
26 Liberty A. Pardee of DRUMMOND LAW FIRM, hereby submits his *Reply in Support of*
27 *Motion for Leave to File First Amended Complaint Against Defendant United Financial*
28 *Casualty Company.*



MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff John Peterson's ("Peterson") request to amend his Complaint is not untimely, prejudicial, or futile. Defendant United Financial Casualty Company ("United Financial") ignores that Peterson timely filed his request for leave to amend pursuant to the district court's original scheduling order. United Financial also fails to assert any substantive argument establishing Peterson's proposed amendment will cause prejudice. Rather, United Financial argues Peterson's proposed amendment is futile because its insured, Guadalupe Zazueta ("Zazueta"), agreed to pay installment fees shown on the billing statement during the policy term as they became due. This argument fails because the installment fees United Financial charged were separate and distinct from the payment of insurance premiums. Moreover, United Financial ignores that Zazueta agreed to pay installment fees as they **became due**. United Financial prematurely requested Zazueta remit a premium payment, along with the separate installment fee, **before** those charges should have become due because Zazueta paid the first two premium payments at the inception of the policy. Peterson has established a legitimate factual basis to prove United Financial breached its policy, breached the covenant of good faith and fair dealing, and violated Nevada's Unfair Claims Practices Act. Accordingly, United Financial fails to overcome the extreme liberality to freely allow amendments pursuant to FRCP 15(a)(2).

Similarly, Peterson's proposed amendment is not time barred because it relates back to August 12, 2022, the date he filed his original complaint pursuant to both FRCP 15(c) and NRCP 15(c). Peterson's proposed amendment arises from the same conduct set forth in his original Complaint because he alleges facts that relate to United Financial's erroneous cancellation of coverage. United Financial's coverage cancellation is the operative conduct or transaction that formed the basis of Peterson's original Complaint. United Financial fails to address relation back and instead challenges the timeliness of Peterson's original Complaint. This argument is not only irrelevant to the pending request, but also fails as a matter of law because the statute of limitations did not begin

1 to run on Peterson's claims for bad faith and violation of Nevada's Unfair Claims
 2 Practices Act until the excess judgment was entered against the at-fault insured driver,
 3 Pedro Perez-Papias ("Perez-Papias"). Therefore, Peterson's assigned claims are not time
 4 barred and his proposed amendment is similarly not time barred.

5 II.

6 LEGAL ARGUMENT

7 When detailing the relevant standard of review, United Financial refers to legal
 8 principles that do not apply to Peterson's request for leave to amend in the context of
 9 FRCP 15(a)(2). Specifically, Peterson's requested amendment does not "merely enlarge
 10 on a legal theory rejected by the court" because this Court has not rejected any legal
 11 theory Peterson presented in his Complaint. (ECF No. 27, at 4:20–21). This Court has
 12 never previously granted Peterson leave to amend and, as a result, has no basis to deny
 13 Peterson's pending motion to amend because it fails to address previous defects in his
 14 Complaint. *Id.* at 4:22–27). United Financial inaccurately frames the legal standard
 15 governing Peterson's amendment request to somehow bolster its irreparably flawed
 16 arguments in opposition. This underscores the futility of United Financial's arguments
 in opposition, not Peterson's proposed amendment.

17 A. Peterson's Request for Leave to Amend is Timely and Not the Result of 18 Undue Delay

19 United Financial asserts that Peterson's decision to wait until March 13, 2023 to
 20 request leave to amend his Complaint constitutes an undue delay because he previously
 21 knew about the facts giving rise to the proposed amendment. Peterson possessed United
 22 Financial's underwriting file and the spreadsheet showing the payment made by
 23 Zazueta on March 26, 2021. However, the nature of Peterson's amendment
 24 demonstrates the billing scheme United Financial perpetrated was complex and not
 25 readily apparent. Specifically, Peterson was required to evaluate the total one-year
 26 premium of \$3,182.00 based on a ten-payment premium plan and evaluate all of the bills
 27 United Financial remitted to verify that Zazueta's initial \$656.40 payment constituted
 28 more than two months of premium payments. (ECF No. 18-2, at Bates no. UFCC000165;
 ECF No. 18-4, at Bates No. UFCC000171; ECF No. 18-5, at Bates no. UFCC000173).

Peterson was required to evaluate this evidence, in its totality, to calculate the monthly and daily premium rates to ensure he possessed the requisite factual basis to allege United Financial perpetrated a misleading billing scheme that it used to erroneously cancel coverage. Peterson's decision to be deliberative in his analysis before he determined he possessed the requisite factual basis to request leave to amend did not cause an undue delay sufficient to deny the motion for leave to amend. This is particularly true given that ample time remains for the parties to conduct discovery. *See Barnum v. Equifax Info. Servs., LLC*, No. 2:16-cv-2866-RFB-NJK, 2017 U.S. Dist. LEXIS 76003, at *15 (D. Nev. May 17, 2017) (There is a strong presumption against finding undue delay where sufficient time remains to conduct discovery). The close of discovery in this matter is August 11, 2023, which is more than three months from now. (ECF No. 23, at p. 3). This directly undermines the significance of Peterson's alleged delay in seeking leave to amend.

Even if Peterson possessed the requisite knowledge to state this proposed theory of liability against United Financial resulting from its billing scheme when he filed the original complaint, "on its own it is not enough to deny a leave for amendment" *Heffington v. Gordon, Aylworth & Tami, P.C.*, No. 3:16-cv-02079-AC, 2017 U.S. Dist. LEXIS 119425, at *9 (D. Ore. July 28, 2017). "Undue delay, by itself, however, is insufficient to justify denying a motion to amend." *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999); *See also, Garcia v. Ryan*, No. CV-13-1591-PHX-DJH (DMF), 2017 U.S. Dist. LEXIS 15480, at *9 (D. Ariz. Feb. 2, 2017) ("Ninth Circuit case law is clear that [the undue delay] factor alone is insufficient to justify denying a motion to amend."); *Boskoff v. Yano*, 217 F. Supp. 2d 1077, 1093 (D. Haw. 2001) ("The law in this jurisdiction, however, clearly does not permit denial of a motion to amend a pleading based on undue delay alone."). United Financial's argument against Peterson's request for leave to amend is solely predicated upon alleged undue delay because, as explained below, its futility argument is not valid. Therefore, United Financial fails to carry its burden to establish that this Court should deny Peterson's motion for leave to amend his Complaint. *See Vandehey v. Real Soc. Dynamics, Inc.*, No. 2:17-cv-02230-JAD-NJK, 2017 U.S. Dist. LEXIS 164776, at *3 (D. Nev. Oct. 4, 2017). Notably, this Court was previously

1 “unpersuaded that any delay suffices to deny [a] motion for leave to amend when the
2 discovery cutoff is months away [and] no showing of prejudice or bad faith has been
3 made,” even when the plaintiff previously knew the facts giving rise to her proposed
4 amendment. *Babbitt v. Nielsen*, No. 2:18-cv-02076-RFB-NJK, 2019 U.S. Dist. LEXIS
5 29149, at *2 (D. Nev. Feb. 25, 2019).

6 **B. Peterson’s Proposed Amendment is Not Futile Because United**
7 **Financial’s Billing Scheme Supports His Claims for Breach of Contract,**
8 **Bad Faith, and Violation of Nevada’s Unfair Claims Practices Act**

9 A proposed amendment is futile if it would be subject to immediate dismissal.
10 *Steckman v. Hart Brewing*, 143 F.3d 1293, 1298 (9th Cir. 1998). “[D]enial of leave to
11 amend on the ground of futility is **rare**.” *Tasty One v. Earth Smarte Water*, No. 2:20-cv-
12 01625-APG-NJK, 2021 U.S. Dist. LEXIS 47884, at *4 (D. Nev. Mar. 15, 2021) (*citing*
13 *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003) (emphasis added)).
14 “Ordinarily, courts will defer consideration of challenges to the merits of a proposed
15 amended pleading until after leave to amend is granted and the amended pleading is
16 filed.” *Id.*

17 United Financial’s futility challenge should not only be deferred, but summarily
18 disregarded because it distorts the policy language in a manner that does not refute the
19 substantive factual allegations of Peterson’s proposed amendment. Specifically, United
20 Financial claims that its policy required Zazueta, its insured, to pay premiums when
21 prompted to pay the installment fees.” (ECF No. 27, at 8:7–10). However, United
22 Financial relies on a provision in the policy titled “Other charges,” which never even
23 references premium payments. (ECF No. 18-2, at Bates no. UFCC000169). Thus, United
24 Financial lacks the requisite factual basis to contend Peterson’s proposed amendment is
25 futile because Zazueta agreed to pay installment fees that became due. Peterson
26 contends that Zazueta’s agreement to pay any premium was solely predicated upon that
27 premium payment becoming due. Because Zazueta paid the first two months of premium
28 payments at the inception of the United Financial policy on August 24, 2017, no
premium payments became due to United Financial until November 2017. (ECF. No.
18-15, at pp. 4–6, ¶¶ 24–39). Even if the “Other charges” provision was construed to

1 include premium payments, United Financial still improperly cancelled Zazueta's auto
 2 liability insurance policy because she paid the first two months of premiums for coverage
 3 under the policy. As a result, no premiums became due until November 2017, not
 4 September or October 2017, the months in which United Financial erroneously billed
 5 Zazueta for premium payments. (ECF No. 18-4, at Bates no. UFCC000171, ECF No. 18-
 6 5, at Bates no. UFCC000173). United Financial's futility argument in this regard is
 7 invalid because Peterson has properly alleged that the missed premium payments
 8 United Financial relied upon to cancel coverage were not due.

9 Peterson's Amended Complaint sets forth a valid factual theory of liability
 10 predicated upon United Financial's premature and invalid cancellation of coverage that
 11 Zazueta already paid to receive. United Financial erroneously relied upon this coverage
 12 denial to breach the duty of good faith and fair dealing and its contractual duty to defend
 13 its insured, Perez-Papias, against Peterson's personal injury complaint. United
 14 Financial cannot establish with any degree of certainty that Peterson's proposed
 15 amendment will be subject to immediate dismissal. United Financial's failure to
 16 demonstrate futility of amendment justifies granting Peterson leave to amend his
 17 Complaint. If United Financial wishes to challenge the merits of Peterson's proposed
 18 amendment, it should do so through a separate motion after leave to amend is granted.

19 **C. Peterson's Claims for Bad Faith and Violation of Nevada's Unfair Claims**
 20 **Practices Act are Not Time Barred**

21 In a last-ditch effort to defeat Peterson's Motion for Leave to Amend, United
 22 Financial contends that Peterson's amended claims for bad faith and violation of
 23 Nevada's Unfair Claims Practices Act are untimely under the relevant statutes of
 24 limitations. This argument fails for several reasons.

25 Conspicuously absent from United Financial's Response is any reference to the
 26 relation back of amendments in relation to motions for leave to amend a pleading. FRCP
 27 15(c) states, in relevant part:

28 **(1) *When an Amendment Relates Back.*** An amendment to
 a pleading relates back to the date of the original pleading
 when:

1 (A) the law that provides the applicable statute of
 2 limitations allows relation back;

3 (B) the amendment asserts a claim or defense that
 4 arose out of the conduct, transaction, or occurrence set
 out—or attempted to be set out—in the original
 pleading[.]

5 FRCP 15(c)(1)(A) “incorporates state law relation back rules when ‘that state’s
 6 law provides the applicable statute of limitations and is more lenient than the federal
 7 rules.’” *Amezcuca v. Jordan Transp., Inc.*, No. 2:13-cv-01608-APG-CWH, 2015 U.S. Dist.
 8 LEXIS 170815, at *8 (D. Nev. Dec. 18, 2015) (quoting *Butler v. Nat’l Cmty. Renaissance*
 9 *of Cal.*, 766 F.3d 1191, 1200 (9th Cir. 2014)). NRCP 15(c)(1) mirrors its federal
 10 counterpart because it confirms “an amendment to a pleading relates back to the date
 11 of the original pleading when: (1) the amendment asserts a claim that or defense that
 12 arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—
 13 in the original pleading[.]” “Claims arise from the same conduct, transaction, or
 14 occurrence when they arise from a ‘common core of operative facts.’” *Cook v. Las Vegas*
 15 *Resort Holdings, LLC*, No. 2:18-cv-01583-GMN-BNW, 2019 U.S. Dist. LEXIS 166432, at
 16 *11 (D. Nev. Sep. 26, 2019) (quoting *Mayle v. Felix*, 545 U.S. 644, 659, 125 S. Ct. 2562,
 17 2572 (2005)). “The relation back doctrine of Rule 15(c) is liberally applied” in the Ninth
 18 Circuit. *Asarco, LLC v. Union Pac. R.R. Co.*, 765 F.3d 999, 1005 (9th Cir. 2014). The
 19 Nevada Supreme Court similarly gives a “liberal construction” to relation back under
 NRCP 15(c). *Costello v. Casler*, 254 P.3d 631, 635 (Nev. 2011).

20 United Financial’s conspicuous failure to address relation back is telling because
 21 it underscores the deficiencies of its argument. Peterson’s original Complaint alleges
 22 United Financial knowingly canceled coverage owed to Perez-Papias under the subject
 23 auto policy without any reasonable basis. (ECF No. 1-2, at pp. 12–13, ¶¶ 64–67).
 24 Peterson’s original Complaint alleges United Financial relied on its erroneous coverage
 25 cancellation to breach its contractual duty to defend Perez-Papias against Peterson’s
 26 personal injury complaint. *Id.* at pp. 11-12, ¶¶ 57–61). Peterson’s proposed amendment
 27 alleges an alternative factual theory that United Financial breached the policy and the
 28 covenant of good faith and fair dealing when it erroneously canceled coverage for alleged

missed premium payments that were not actually owed. (ECF. No. 18-15, at pp. 4–6, ¶¶ 24–39, p. 15, ¶¶ 82–84, p. 18, ¶¶ 105–109). The common transaction or occurrence that both Peterson’s original Complaint and his proposed Amended Complaint share is United Financial’s improper cancellation of coverage. The shared common transaction or occurrence also validates Peterson’s additional claim that United Financial violated the Nevada Unfair Claims Practices Act because those alleged violations arise from the same alleged conduct, United Financial’s baseless and improper cancellation of coverage. (ECF No. 18-15, at pp. 19–20, ¶¶ 115–121). Therefore, Peterson’s proposed amendment to his Complaint relates back to August 12, 2022, the date he filed his original Complaint and his claims for bad faith and violation of Nevada’s Unfair Claims Practices Act are not time barred.

The timing of United Financial’s argument that Peterson’s claims for bad faith and violation of Nevada’s Unfair Claims Practices Act are time barred is confounding. United Financial’s express position is that the statute of limitations for Peterson’s claims arising from bad faith and violations of Nevada’s Unfair Claims Practices Act expired in November 2021 and November 2020, respectively. Based on this view, Peterson’s Complaint, which was filed on August 12, 2022, was untimely under the statute of limitations. (ECF No. 1-2, at p. 1). Yet, United Financial filed its Answer to Peterson’s Complaint and has continued to litigate this action, despite its belief that Peterson’s Complaint alleges claims that are time barred under the statutes of limitations. United Financial’s own conduct demonstrates the claims alleged in Peterson’s Complaint were timely filed before the statute of limitations expired. Otherwise, United Financial would not have waited until Peterson moved for leave to amend his Complaint to assert this argument. United Financial’s reliance on this statute of limitations argument is nothing more than a desperate attempt to preclude Peterson from amending his Complaint.

United Financial’s statute of limitations argument, and, by extension, its laches argument, are also not persuasive because they are based on the flawed legal premise that the statute of limitations began to run before the alleged damages accrued. “[A] cause of action for bad faith arises when the insured is *legally obligated* to pay a judgment that is in excess of his policy limits.” *Belanger v. GEICO Gen. Ins. Co.*, 623 F.

1 App'x 684, 688 (5th Cir. Aug. 21, 2015) (*quoting Kelly v. Williams*, 411 So.2d 902, 904
 2 (Fla. Dist. Ct. App. 1982)). Perez-Papias, as both the at-fault driver in the underlying
 3 motor vehicle collision and insured of United Financial, sustained damages from United
 4 Financial's breach of the covenant of good faith and fair dealing and violation of
 5 Nevada's Unfair Claims Practices Act when the district court entered an excess
 6 judgment against him in Peterson's personal injury action. (ECF No. 18-13, at Bates
 7 nos. UFCC000342–UFCC000347). The damages from that excess judgment allowed
 8 Peterson to secure an assignment of Perez-Papias's claims against United Financial for
 9 its breach of contract, breach of the covenant of good faith and fair dealing, and other
 10 related claims. *See* NEV. REV. STAT. 21.320; *Gallegos v. Malco Enters. Of Nev.*, 255 P.3d
 11 1287, 1289 (Nev. 2011).

12 United Financial's argument regarding the statute of limitations is not credible
 13 for the reasons outlined above. Even though this argument is legally invalid, United
 14 Financial should have presented this argument in a motion to dismiss when Peterson
 15 first filed his Complaint, not in opposition to a motion for leave to amend. The liberal
 16 application of relation back empowers this Court to conclude Peterson's proposed
 17 amendment to allege an alternative theory of bad faith liability and related claim for
 18 violation of Nevada's Unfair Claims Practices Act is valid and timely as a matter of law.

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1 III.

2 **CONCLUSION**

3 Based on the foregoing law and analysis, Plaintiff John Peterson respectfully
4 requests this Court to grant his Motion for Leave to File First Amended Complaint
5 Against Defendant United Financial Casualty Company.

6 DATED this 2nd day of May, 2023.

7 **PRINCE LAW GROUP**

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CERTIFICATE OF SERVICE

Pursuant to LR 5-1 and FRCP 5(b), I hereby certify that I am an employee of **PRINCE LAW GROUP** and that on the 2nd day of May, 2023, I electronically filed the foregoing document entitled **PLAINTIFF JOHN PETERSON'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AGAINST DEFENDANT UNITED FINANCIAL CASUALTY COMPANY** with the Clerk of the Court using the CM/ECF system, which sent a notice of electronic filing to the following:

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